

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-1464

To Be Argued By

Bob A. Kramer

B
p/s

In The

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Appellee,

Docket Nos.

76-1464

76-1465

76-1466

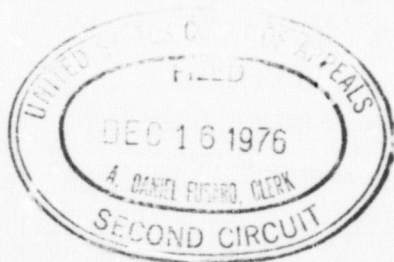
-against-

COSME A. CACERES, LEOPOLD LOZANO
AND JOSE A. LIRIANO

Defendant-Appellants,

APPELLANT JOSE A. LIRIANO'S

APPENDIX ON APPEAL



CANTOR & KRAMER, ESQS
Attorneys for Defendant-Appellant
Jose A. Liriano
Office & P.O. Address
201 West 72nd Street
New York, New York 10023

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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

-----X
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-against-

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----- X

UNITED STATES OF AMERICA

- against -

COSME A. CACERES,
LEOPOLD LOZANO and
JOSE A. LIRIANO

Defendant.

----- X

THE GRAND JURY CHARGES:

COUNT ONE

On or about October 31, 1975, within the Eastern District of New York, the defendants COSME A. CACERES, LEOPOLD LOZANO, and JOSE A. LIRIANO, with intent to defraud did utter and publish counterfeited United States currency, to wit, one counterfeited twenty dollar Federal Reserve Note, Serial Number F67681889A, to Sip 'n Smoke Store at 28-16 Broadway, Astoria, New York, the defendants COSME A. CACERES, LEOPOLD LOZANO and JOSE A. LIRIANO knowing such note to be counterfeited. (Title 18, United States Code, Section 472 and Section 2).

COUNT TWO

On or about October 31, 1975, within the Eastern District of New York, defendants COSME A. CACERES, LEOPOLD LOZANO, and JOSE A. LIRIANO, with intent to defraud did utter and publish counterfeited United States currency, to wit, one counterfeited twenty dollar Federal Reserve Note, Serial Number F67681889A, to Walken's Bakery, 29-17 Broadway, Astoria, New York, the defendants COSME A. CACERES, LEOPOLD LOZANO and JOSE A. LIRIANO knowing such note to be counterfeited. (Title 18, United States Code, Section 472 and Section 2).

Granwell J
Cr. No. 76CF182
(T. 18, U.S.C., §371, §472
and §2)

On or about October 31, 1975, within the Eastern District of New York, defendants COSME A. CACERES, LEOPOLD LOZANO and JOSE A. LIRIANO, with intent to defraud did utter and publish counterfeited United States currency, to wit, one counterfeited twenty dollar Federal Reserve Note, Serial Number F67681889A, to Leo-Pete Grocery, 1455 Broadway, Astoria, New York, the defendants COSME A. LEOPOLD LOZANO, and JOSE A. LIRIANO, knowing such note to be counterfeited. (Title 18, United States Code, Section 472 and Section 2).

COUNT FOUR

On or about October 31, 1975, within the Eastern District of New York, defendants COSME A. CACERES, LEOPOLD LOZANO, and JOSE A. LIRIANO, with intent to defraud, did utter and publish counterfeited United States currency, to wit, one counterfeited twenty dollar Federal Reserve Note, Serial Number F67681889A, to Pasticceria LaTorre at 32-19 Broadway, Astoria, New York, the defendants COSME A. CACERES, LEOPOLD LOZANO and JOSE A. LIRIANO, knowing such note to be counterfeited. (Title 18, United States Code, Section 472 and Section 2).

COUNT FIVE

On or about October 31, 1975, within the Eastern District of New York, defendants COSME A. CACERES, LEOPOLD LOZANO and JOSE A. LIRIANO, with intent to defraud had in their possession counterfeited United States currency, to wit, approximately six counterfeit twenty dollar Federal Reserve Notes, Serial Number F67681889A, and one counterfeited fifty dollar Federal Reserve Note, Serial Number B31985757A, the defendants COSME A. CACERES, LEOPOLD LOZANO, and JOSE A. LIRIANO, knowing such notes to be counterfeited. (Title 18, United States Code, Section 472 and Section 2).

COUNT SIX

On or about October 31, 1975, within the Eastern District of New York, defendant JOSE A. LIRIANO, with intent to defraud, did have in his possession, counterfeited United States currency, to wit, one counterfeited fifty dollar Federal Reserve Note, Serial Number B31985757A, the defendant JOSE A. LIRIANO, knowing such note to be counterfeited. (Title 18, United States Code, Section 472).

COUNT SEVEN

On or about October 31, 1975, within the Eastern District of New York, defendant COSME A. CACERES, with intent to defraud, did have in his possession, counterfeited United States currency, to wit, one counterfeited twenty dollar Federal Reserve Note, Serial Number F67681889A, the defendant COSME A. CACERES, knowing such note to be counterfeited. (Title 18, United States Code, Section 472).

COUNT EIGHT

On or about October 31, 1975, within the Eastern District of New York, defendants COSME A. CACERES, LEOPOLD LOZANO, and JOSE A. LIRIANO did knowingly and wilfully conspire, to commit an offense against the United States in violation of Title 18, United States Code, Section 472 by conspiring to possess and conspiring to utter and publish a quantity of counterfeited United States currency, to wit counterfeited twenty dollar Federal Reserve Notes, Serial Number F67681889A and counterfeited fifty dollar Federal Reserve Notes B31985757A Title 18, United States Code, Section 371.

In furtherance of the said unlawful conspiracy and for the purposes of effecting the objectives thereof, the defendants COSME A. CACERES, LEOPOLD LOZANO, and JOSE A. LIRIANO committed the following:

O V E R T A C T S

1) On or about October 31, 1975, the defendants COSME A. CACERES, LEOPOLD LOZANO and JOSE A. LIRIANO met to discuss the disposition of a quantity of counterfeited Federal Reserve Notes.

2) On or about October 31, 1975, the defendant COSME A. CACERES entered the Sip 'n Smoke store at 28-16 Broadway in Astoria Queens.

3) On or about October 31, 1975, defendants COSME A. CACERAS, LEOPALD LOZANO, and JOSE A. LIRIANO drove in a 1968 Chrysler, New York license plate 920KLL, from 28-16 Broadway to 1455 Broadway in Astoria, Queens.

A TRUE BILL.

FOREMAN.

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

E/ 207 District Office	Assigned Trial Dis./Sentence	U. S. vs. CACERES, COSME Defendant	Day No. 11 76 182	No. of Defendants	MAGR. 175 M 1880 CASE NO.																																						
18-371,472 & 2 Did utter and publish as true forged counterfeit \$20 Federal Reserve Notes & conspiracy to do so			8		BAIL RELEASE <input type="checkbox"/> Personal Recog. <input type="checkbox"/> Unsecured Bond AMT Conditional Release Set (1000) <input type="checkbox"/> 10% Deposit <input type="checkbox"/> Cash <input type="checkbox"/> Surety Bond <input type="checkbox"/> Collateral <input type="checkbox"/> 3rd Party <input type="checkbox"/> Custody <input type="checkbox"/> PSA (See Docket)																																						
U.S. Attorney or Asst David Gould			U.S. District Court Eastern District of New York 100 8 1976																																								
ARREST 10-31-75 U.S. Custody Began on Above Charges		INDICTMENT <input checked="" type="checkbox"/> Information <input type="checkbox"/> 3-11-76 Waived <input type="checkbox"/> Superseding <input type="checkbox"/> Indict/Info <input type="checkbox"/>		TRIAL Trial Date <input checked="" type="checkbox"/> 6/7/76 Trial Begun <input checked="" type="checkbox"/> 6/7/76 Trial Ended <input checked="" type="checkbox"/> 6/15/76																																							
<input type="checkbox"/> Prosecution Deferred		ARRANGEMENT 1st Plea Final Plea		SENTENCE Disposition <input checked="" type="checkbox"/> Convicted <input type="checkbox"/> Acquitted <input type="checkbox"/> Dismissed <input type="checkbox"/> Nolle/Discontinued*																																							
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Search Warrant</th> <th>Issued</th> <th>DATE</th> <th>INITIAL/No.</th> <th>INITIAL APPEARANCE</th> <th>INITIAL/No.</th> <th>OUTCOME</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Summons</td> <td>Issued</td> <td></td> <td></td> <td rowspan="2"> PRELIMINARY EXAMINATION OR REMOVAL HEARING <input checked="" type="checkbox"/> Waived <input type="checkbox"/> Not Waived <input type="checkbox"/> Intervening Indictment </td> <td rowspan="2"> Date Scheduled 11-3-75 Date Held </td> <td rowspan="2"> <input type="checkbox"/> Dismissed <input type="checkbox"/> Held for District Ct <input checked="" type="checkbox"/> Held to Answer to U. S. District Court AT: EDNY </td> </tr> <tr> <td>Served</td> <td></td> <td></td> </tr> <tr> <td>Arrest Warrant</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>COMPLAINT</td> <td></td> <td>11-1-75</td> <td></td> <td>Tape No.</td> <td>INITIAL/No.</td> <td>Magistrate's Initials DVAC/0700</td> </tr> <tr> <td colspan="7"> OFFENSE T. 18 USC §472 - Possession of counterfeit Federal Reserve Notes (In Complaint) </td> </tr> </tbody> </table>						Search Warrant	Issued	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME	Summons	Issued			PRELIMINARY EXAMINATION OR REMOVAL HEARING <input checked="" type="checkbox"/> Waived <input type="checkbox"/> Not Waived <input type="checkbox"/> Intervening Indictment	Date Scheduled 11-3-75 Date Held	<input type="checkbox"/> Dismissed <input type="checkbox"/> Held for District Ct <input checked="" type="checkbox"/> Held to Answer to U. S. District Court AT: EDNY	Served			Arrest Warrant							COMPLAINT		11-1-75		Tape No.	INITIAL/No.	Magistrate's Initials DVAC/0700	OFFENSE T. 18 USC §472 - Possession of counterfeit Federal Reserve Notes (In Complaint)						
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Show last names and suffix numbers of other defendants on same indictment/information
LOZANO 2; LIRIANO 3

DATE	PROCEEDINGS
11-1-75	Arraignment before Judge Bartels - AUSA Corcoran - Marion Seltzer, Esq., present and assigned to represent defendant.
11-3-75	Hearing scheduled for November 10, 1975 at 2:00 P. M.
11/5/75	Cash deposited. Deft. released. Hearing Waived.
3-11-76	Before MISHLER, Ch J - Indictment filed.
3-18-76	Before BRAMWELL, J - case called - deft & counsel Marion Seltzer of Legal Aid present - deft arraigned and waives reading of the indictment -and enters a plea of not guilty - 30 days for motions - adjd to June 1, 1976 for trial - bail contd.
4/21/76	Notice of readiness for trial filed
5-28-76	Before BRAMWELL, J. - Case called. Motion for severance withdrawn.
6/1/76	Before BRAMWELL, J.- Case called- defts and counsel present case adjd to 6/3/76 at 12:00 P.M. for trial- bail contd
6/3/76	Before BRAMWELL, J.- Case called- deft and counsel present hearing on motion to suppress begun-interpreter sworn-govt rests- hearing contd to 6/7/76
6-7-76	Govts Memorandum of Law filed
6/7/76	Before BRAMWELL, J.- Case called- deft and counsel present interpreter sworn-motion to suppress denied- hearing con-

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
	cluded-jurors selected and sworn- trial contd to 6/8/76				
6-8-76	Before BRAMWELL, J - case called - defts & counsel present - Interpreter Barron-Boyne present - trial resumed - trial contd to 6-9-76				
6-9-76	Before BRAMWELL, J - case called - Deft & counsel present - Interpreter Mr. Barron-Boyne present - trial resumed - Govt rests - deft moves pursuant to Rule 29 etc. motion denied - trial trial contd to June 10, 1976 @ 10:30 am.				
6/10/76	Before BRAMWELL, J. - Case called- deft and counsel present- interpreter present- trial resumed- deft rests- deft renews motion pursuant to Rule 29, etc. motions denied- trial contd to 6/14/76				
6-11-76	Govts Requests to Charge filed.				
6-14-76	Before BRAMWELL, J - case called - deft & counsel present - Interpreter Albert Barron-Boyne present - trial resumed - court charges Jury at 2:25 PM to 3:50 PM - alternates discharged - Jury retires to deliberate at 3:55 PM - Jury came into court at 5:30 PM for reading of testimony of deft Cosmo Caceres - Jury retires for deliberations at 7:15 PM - Order of sustenance signed - Jury came into court at 10:45 PM and sent home by the Court - trial contd to June 15, 1976 at 10:00 am.				
6-14-76	By BRAMWELL, J - Order of sustenance signed, and filed.				
6-15-76	Voucher for expert services filed				
6-15-76	Before BRAMWELL, J - case called - deft & counsel present - Interpreter Albert Baron-Boyne present - trial resumed - Jury resumes deliberations at 10:15 am - Jury came into court and rendered a verdict of guilty on counts 1, to 4 incl., 7 and 8 as to deft Caceres - Jury polled and discharged - all defts move pursuant to Rule 29 - motion denied - bail contd and sentence adjd without date - trial concluded.				
6-15-76	By BRAMWELL, J - Order of sustenance signed (Lunch)				
9-17-76	Before BRAMWELL, J - case called - deft & atty M. Seltzer present - Deft sentenced to imprisonment for 3 years - to serve 4 months in a jail type institution and execution of remainder of sentence is suspended and deft is placed on probation for 3 years on count 1 pursuant to 18:3651. Special condition of probation is if deft is deported he may not reenter the US, its territories or possessions during his probation, except at the request of the Atty General or the Court. Imposition of sentence on each of counts 2 to 5 and 7 are suspended and deft is placed on probation for 3 yrs. all sentences on cts. 2 to 5 and 7 to run concurrent. Court has taken into consideration the Y.C.A. prior to sentence. Deft advised of his right to appeal in forma pauperis. Court assigns Ms. M. Seltzer of Legal Aid as counsel for appeal - bail contd pending appeal.				
9-17-76	Judgment and commitment and order of probation filed - certified copies to marshal & probation.				
9/20/76	By BRAMWELL, J. - Order releasing bail to release to Pre-Trial Services Agency to report once weekly.				
9/20/76	Voucher for compensation for expert services filed.				

Cont on next page

(a) (b) (c) (d)

Interval Staff Date Ltr Total
(per Section II) Evt Date Code Days

[illegible]

10/8/76
Jerr (Cave)

Time noted: 2:00 p.m.

THE COURT: Are you ready to proceed?

MR. DEMOS: Ready, your Honor.

THE COURT: Bring in the jury.

(The jury enters the jury box.)

THE COURT: Madam Forelady, Ladies and
Gentlemen of the Jury:

We come now to the final stage of the proceedings. The Court will now charge you on the law to be applied to the facts in the case.

As you may recall, I initially gave you a pre-charge as to the manner in which the case would be presented to you. I told you that most of the evidence in the case would come in the form of testimony of witnesses and that you were to pay special attention to the manner in which the witnesses testified.

I believe I also instructed you that you would be the judges of the facts in the case, that being your sole province, and that your recollection of the facts after having heard all of the evidence in the case, the testimony of witnesses and the documentary proof, was to control the determination of the issues. Likewise, at that time I told you that I would be the judge of the law. This has not

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changed at this stage of the proceedings.

I will not review the facts in this case for you because I am certain that with summations by the attorneys there is no need for the Court to review the facts. In any event, if you find there is some fact in the case you may have forgotten or don't recollect or you can't agree with each other in your deliberations, you can have it read back from the record, and that will, I am sure, refresh your memory.

In any event, I am the judge of the law. You must accept what I say to be the law in this case.

The attorneys have been permitted by the Court and by the Rules to make opening statements and summations to you. Under no circumstances are the statements they have made by way of opening or by way of summation to be taken as evidence. However, the court and the law does permit you to take the arguments that they have proffered before you and weigh those arguments, and if you agree with what they have said on either side of the case, you may use those arguments in your deliberations and in discussing the case with each other and try to convince one another as to what the final determination shall be with reference to the deliberations

1
2 at hand.

3 If you feel that the arguments are not
4 commensurate with the testimony and the proof in
5 the case, you may disregard them. The arguments
6 are not evidence. You need not weigh them. How-
7 ever, there are times when the arguments of the
8 attorneys will give you an insight as to something
9 you may have missed and you may discuss that portion
10 of it if you so desire.

11 Of course, I also said to you that during
12 the trial the Court will be the judge of the law,
13 likewise as to motions which at times we had at
14 a side bar, as you may recall. That was not for
15 the purpose of keeping any of the proof from you,
16 but were matters of law that were discussed between
17 the attorneys and the Court itself and should not
18 have come before you.

19 If you feel that you have discovered by
20 some stretch of your imagination what this Court
21 thinks as to either some of the testimony or the
22 case itself, you should remove that from your
23 mind, because I tell you here and now I have come
24 to no conclusion in this case, nor have I indicated
25 to you in any way whatsoever what my feelings with

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1 reference to the facts in the case or with
2 reference to the guilt or innocence of the de-
3 fendants. That is your province and your job.
4 You should not try to weigh what you believe the
5 Court's impressions may be.
6

7 You must understand that the lawyers who
8 appear before you are advocates. They are advocat-
9 ing the best case they can for the parties they
10 represent, and they have a right to exercise as
11 much forcefulness as they desire in their question-
12 ing or otherwise in presenting their case. I say
13 this because this is within the framework of the
14 ordinary trial.

15 No statement, ruling, remark or comment which
16 I made during the course of the trial was intended
17 to indicate my opinion as to how you should decide
18 the case or to influence you in any way in your
19 determination of the facts. If at any time I made
20 any comment regarding the facts, you are at liberty
21 to disregard it.

22 At times I asked questions of the witnesses.
23 When I did so it was for the purpose of bringing
24 out matters which I felt should be brought out and
25 not in any way to indicate my opinion about the

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1 facts or to indicate the weight I felt you should
2 give to the testimony of the witnesses. Also, you
3 should not now show prejudice toward a lawyer or
4 his client because I found it necessary to ad-
5 monish the lawyer during the course of the trial.
6 It is the duty of the Court to admonish an attorney
7 who out of zeal for his cause does something which
8 is not in keeping with the rules of evidence or
9 procedure. You are to draw no inference against
10 a side to whom an admonition of the Court may have
11 been addressed during the trial of this case.
12

13 Objections and rulings. It is the duty of
14 the attorney on each side of a case to object when
15 the other side offers testimony or other evidence
16 which the attorney believes is not properly admis-
17 sible. You should not show prejudice against an
18 attorney or his client because the attorney has
19 made objections. Upon allowing testimony or
20 other evidence to be introduced over the objection
21 of an attorney, the Court does not, unless expressly
22 stated, indicate any opinion as to the weight or
23 effect of such evidence.

24 As stated before, the jurors are the sole
25 judges of the credibility of all witnesses and the
weight and effect of all evidence. When the Court

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has sustained an objection to a question addressed to a witness, the jury must disregard the question entirely and may draw no inference from the wording of it or speculate as to what the witness would have said if he had been permitted to answer the question.

In determining the facts, the jury is reminded that before each member was accepted and sworn to act as a juror, he or she was asked questions regarding his or her competency, qualifications, fairness and freedom from prejudice or sympathy. On the faith of those answers the juror was accepted by the parties. Therefore, those answers are as binding on each of the jurors now as they were then and should remain so until the jury is discharged from consideration of this case.

You cannot decide that you do not like the sections of the law that I will quote to you, or any other part of the charge. You have the obligation of accepting the law as I charge it, just as I have the obligation of accepting your findings of fact in your ultimate verdict as to the guilt or innocence of each defendant as to each charge. It lends for predictability and stability if

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1 judges throughout the country in types of charges
2 such as this charge uniformly or substantially so
3 and the juries accept it, it would be unfair for
4 you to decide this case on your own notions of
5 what the law should be and another jury decide
6 it on their own notions of what the law should be.
7 This is why the obligation is a firm one and one
8 that you should understand.
9

10 You know by this time that this case has
11 come before you by way of an indictment presented
12 by a grand jury sitting in this Eastern District
13 of New York. That indictment charges the defendants
14 with the counts I shall now read to you. Remember,
15 the indictment is merely an accusation, merely a
16 piece of paper. It is not evidence and is not proof
17 of anything. The indictment reads as follows:

18 "Count 1. On or about October 31, 1975,
19 within the Eastern District of New York, the
20 defendants Cosme A. Caceres, Leopold Lozano,
21 and Jose A. Liriano, with intent to defraud did
22 utter and publish counterfeited United States
23 currency, to wit, one counterfeited twenty dollar
24 Federal Reserve note, Serial Number F67681389A,
25 to Sip 'n Smoke Store at 28-16 Broadway, Astoria,

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New York, the defendants Cosme A. Caceres, Leopold Lozano and Jose A. Liriano knowing such note to be counterfeited, this being a violation of Title 18, United States Code Section 472, and Section 2.

"Count 2. On or about October 31, 1975, within the Eastern District of New York, defendants Cosme A. Caceres, Leopold Lozano, and Jose A. Liriano, with intent to defraud did utter and publish counterfeited United States currency, to wit, one counterfeited twenty dollar Federal Reserve note, Serial Number F67681889A, to Walken's Bakery, 29-17 Broadway, Astoria, New York, the defendants Cosme A. Caceras, Leopold Lozano and Jose A. Liriano knowing such note to be counterfeited, in violation of Title 18, United States Code, Section 472, and Section 2.

"Count 3. On or about October 31, 1975, within the Eastern District of New York, defendants Cosme A. Caceres, Leopold Lozano and Jose A. Liriano, with intent to defraud did utter and publish counterfeited United States currency, to wit, one counterfeited twenty dollar Federal Reserve note, Serial Number F67681889A, to Leo-Pete Grocery, 1455 Broadway, Astoria, New York, the

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1.3

defendants Cosme A. Caceres, Leopold Lozano, and Jose A. Liriano knowing such note to be counterfeited, in violation of Title 18, United States Code Section 472, and Section 2.

"Count 4. On or about October 31, 1975, within the Eastern District of New York, defendants Cosme A. Caceres, Leopold Lozano, and Jose A. Liriano, with intent to defraud, did utter and publish counterfeited United States currency, to wit, one counterfeited twenty dollar Federal Reserve note, Serial Number F67681889A, to Pasticceria LaTorre at 32-19 Broadway, Astoria, New York, the defendants Cosme A. Caceres, Leopold Lozano and Jose A. Liriano knowing such note to be counterfeited, in violation of Title 18, United States Code Section 472 and Section 2.

"Count 5. On or about October 31, 1975, within the Eastern District of New York, defendants Cosme A. Caceres, Leopold Lozano and Jose A. Liriano, with intent to defraud, had in their possession counterfeited United States currency, to wit, approximately six counterfeit twenty dollar Federal Reserve notes, Serial Number F67681889A, and one counterfeited fifty dollar

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1
2 Federal Reserve note, Serial Number B31985757A,
3 the defendants Cosme A. Caceras, Leopold Lozano,
4 and Jose A. Liriano knowing such notes to be
5 counterfeited, in violation of Title 18, United
6 States Code Section 472, and Section 2.

7 "Count 6. On or about October 31, 1975,
8 within the Eastern District of New York, defendant
9 Jose A. Liriano, with intent to defraud, did have
10 in his possession counterfeited United States
11 currency, to wit, one counterfeited fifty dollar
12 Federal Reserve note, Serial Number B31985757A,
13 the defendant Jose A. Liriano knowing such note
14 to be counterfeited, in violation of Title 18,
15 United States Code, Section 472.

16 "Count 7. On or about October 31, 1975,
17 within the Eastern District of New York, defendant
18 Cosme A. Caceras, with intent to defraud, did have
19 in his possession counterfeited United States
20 currency, to wit, one counterfeited twenty dollar
21 Federal Reserve note, Serial Number F67681889A,
22 the defendant Cosme A. Caceras knowing such note
23 to be counterfeited. This is in violation of
24 Title 18, United States Code, Section 472.

25 "Count 8. On or about October 31, 1975,

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1 within the Eastern District of New York, defendant
2 Cosme A. Caceres, Leopold Lozano, and Jose A.
3 Liriano did knowingly and willfully conspire to
4 commit an offense against the United States, in
5 violation of Title 18, United States Code, Section
6 472 by conspiring to pass and conspiring to
7 utter and publish a quantity of counterfeited
8 United States currency, to wit, counterfeited
9 twenty dollar Federal Reserve notes, Serial Number
10 P67681889A and counterfeited fifty dollar Federal
11 Reserve notes D31985757A, in violation of Title
12 18, United States Code, Section 371.

14 In furtherance of the said unlawful con-
15 spiracy and for the purposes of effecting the
16 objectives thereof, the defendants Cosme A.
17 Caceres, Leopold Lozano and Jose A. Liriano com-
18 mitted the following overt acts.

19 "1) On or about October 31, 1975, the
20 defendants Cosme A. Caceres, Leopold Lozano and
21 Jose A. Liriano met to discuss the disposition of
22 a quantity of counterfeited Federal Reserve notes.

23 "2) On or about October 31, 1975, the
24 defendant Cosme A. Caceres entered the Sip'n Smoke
25 store at 28-16 Broadway in Astoria, Queens.

1
2 "3) On or about October 31, 1975, defendants
3 Cosme A. Caceras, Leopold Lozano, and Jose A.
4 Liriano drove in a 1968 Chrysler, New York license
5 plate 920XLL, from 28-16 Broadway to 1455 Broadway
6 in Astoria, Queens."

7 Ladies and gentlemen, you will note that
8 the indictment charges in each count that the
9 offense was committed on or about a certain date.
10 As to all eight counts, the proof need not estab-
11 lish with certainty the exact date of the alleged
12 offense. It is sufficient if the evidence in the
13 case establishes beyond a reasonable doubt that
14 the offense was committed on a date reasonably
15 near the date alleged in each count of the indict-
16 ment.

17 These are some general introductory remarks
18 regarding the statutes applicable to Counts 1, 2,
19 3 and 4 in this case.

20 The individual counts numbered 1, 2, 3 and
21 4 of this indictment are all based on the very
22 same two statutes, which I will read for you in a
23 few moments, to wit, Title 18 of the United States
24 Code, Section 472, and Title 18, of the United
25 States Code, Section 2.

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Let me emphasize this to you, for it is of crucial importance: Although the counts numbered 1, 2, 3, and 4 are based on the very same sections of the very same statutes, each count charges a separate offense occurring at a separate commercial establishment; therefore each count should be carefully, seriously, and separately and individually considered by you as such.

I will now read for you the applicable law governing the separate and individual counts numbered 1, 2, 3 and 4. Please apply this law to each of the aforementioned counts separately and individually. In each case ask yourselves in applying the law to each factual transaction set out in the individual counts numbered 1, 2, 3 and 4, Has the Government met its burden as to each such count when considered separately and individually?

As to the statute, Counts 1, 2, 3 and 4 of the indictment are all based on Title 18 of the United States Code, Section 472, and on Title 18 of the United States Code, Section 2.

Title 18 of the United States Code, Section 472, provides in pertinent part as follows:

"Whoever with intent to defraud, utters or

1
2 publishes any counterfeited United States currency
3 shall be guilty of an offense against the laws of
4 the United States."

5 In a case where two or more persons are
6 charged with the commission of a crime, the guilt
7 of any defendant may be established without proof
8 that he personally did every act constituting the
9 offense charged.

10 Section 2 of Title 18 of the United States
11 Code deals with the aiding and abetting of the
12 commission of an offense against the laws of the
13 United States. Section 2 provides in pertinent
14 part as follows:

15 "Whoever commits an offense against the
16 United States or aids, abets, counsels, commands,
17 induces or procures its commission is punishable
18 as a principal.

19 "Whoever willfully causes an act to be done,
20 which if directly performed by him or another would
21 be an offense against the United States, is punish-
22 able as a principal."

23 In other words, every person who willfully
24 participates in the commission of a crime may be
25 found to be guilty of that offense.

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1
2 Participation is willful if done voluntarily
3 and intentionally and with the specific intent to
4 do something the law forbids or with the specific
5 intent to fail to do something the law requires
6 to be done, that is to say, with bad purpose
7 either to disobey or to disregard the law.

8 Aid and abet defined. In order to aid and
9 abet another to commit a crime it is necessary that
10 the accused willfully associate himself in some
11 way with the criminal venture and willfully parti-
12 cipate in it as he would in something he wishes
13 to bring about, that is to say, that he willfully
14 seek by some act or omission of his to make the
15 criminal venture succeed.

16 An act or omission is willfully done if
17 done voluntarily and intentionally and with the
18 specific intent to do something the law forbids
19 or with the specific intent to fail to do something
20 the law requires to be done, that is to say, with
21 bad purpose either to disobey or disregard the law.

22 You, of course, may not find any defendant
23 guilty unless you find beyond a reasonable doubt
24 that every element of the offense as defined in
25 these instructions was committed by some person

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or persons and that the defendant participated in its commission.

Willfully to cause criminal act defined.

In order to cause another person to commit a criminal act it is necessary that the accused willfully do or willfully fail to do something which in the ordinary performance of official duty or in the ordinary course of the business or employment of such other person or by reason of the ordinary course of nature or the ordinary habits of life results in the other person's either doing something the law forbids or failing to do something the law requires to be done.

An act or a failure to act is willfully done if done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law.

Mere presence not sufficient. Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the

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crime unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

To determine whether a defendant aided and abetted the commission of an offense, you ask yourselves these questions:

Did he associate himself with the venture?

Did he participate in it as something he wished to bring about?

Did he seek by his actions to make it succeed?

If he did, then he is an aider and abettor and this is true whether or not he received or intended to receive the proceeds of the venture.

Essential elements of the offense.

Courts 1, 2, 3 and 4 of the indictment charge that on or about October 31, 1975, within the Eastern District of New York, the defendants Cosme A. Caceres, Leopold Lozano, and Jose A. Liriano, with intent to defraud, did utter and publish counterfeited United States currency, to wit, one counterfeited twenty dollar Federal Reserve note to each of the four respective commercial establishments set forth respectively in each of the four

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counts, the defendants knowing in each such case that such note was counterfeited.

In Count 1 the relevant commercial establishment is the Sip 'n Smoke store at 28-16 Broadway, Astoria, New York.

In Count 2 the relevant commercial establishment was Walken's Bakery at 29-17 Broadway, Astoria, New York.

In Count 3 the relevant commercial establishment is Leo-Pete Grocery at 1455 Broadway, Astoria, New York.

In Count 4 the relevant commercial establishment is the Pasticceria LaTorre at 32-19 Broadway, Astoria, New York.

The essential elements of the offense charged in Counts 1, 2, 3 and 4 of the indictment, each of which the Government must prove beyond a reasonable doubt, are:

First, that the defendant committed the act or acts of uttering and publishing counterfeited United States currency;

Second, that the defendant knew at the time that he was committing such act or acts that the currency was counterfeit;

Third, that the defendant did such act or acts

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1
2 willfully and with the specific intent to defraud
3 some person.

4 You are reminded that in considering each
5 of the essential elements of the crime charged in
6 Counts 1, 2, 3 and 4 of the indictment that whoever
7 aids, abets, counsels, commands, induces or pro-
8 cures the commission of an offense against the
9 laws of the United States is punishable as a
10 principal.

11 In order to aid or abet in the commission
12 of an offense against the laws of the United States
13 a person must associate himself with the criminal
14 venture, participate in it, and try to make it
15 succeed.

16 As stated before, the burden is always upon
17 the Government to prove beyond a reasonable doubt
18 every essential element of the crime charged.

19 Also remember that the law never imposes
20 upon a defendant in a criminal case the burden or
21 duty of calling any witnesses or producing any
22 evidence.

23 Uttering and publishing counterfeit money.
24 Specific intent required. You may not find a
25 defendant guilty of the offense charged in Counts

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1
2 1, 2, 3 and 4 of the indictment simply because it
3 appears that he did in fact attempt to pass the
4 Federal Reserve note shown by the evidence, and
5 that the note in fact was counterfeit, unless you
6 find beyond a reasonable doubt that the defendant
7 knew at the time that the note was counterfeit and
8 that, so knowing, he attempted to pass it for the
9 purpose of defrauding some person.

10 Statute. Count 5 of the indictment is based
11 on Title 18, United States Code, Section 472, and
12 on Title 18 of the United States Code, Section 2.

13 Title 18 of the United States Code, Section
14 472, provides in pertinent part as follows:

15 "Whoever with intent to defraud, keeps in
16 his possession any counterfeit currency of the
17 United States shall be guilty of an offense against
18 the United States."

19 As I previously indicated to you, in a
20 case where two or more persons are charged with the
21 commission of a crime, the guilt of any defendant
22 may be established without proof that he personally
23 did every act constituting the offense charged.

24 To facilitate your understanding, I will
25 re-read Section 2 of Title 18 of the United States

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Code, which deals with the aiding and abetting of the commission of an offense against the laws of the United States. Section 2 provides in pertinent part as follows:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.

"Whoever willfully causes an act to be done which, if directly performed by him or another would be an offense against the United States, is punishable as a principal."

As I previously explained to you, in other words, every person who willfully participates in the commission of a crime may be found to be guilty of that offense.

Participation is willful if done voluntarily and intentionally and with specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done; that is to say, with a bad purpose, either to disobey or to disregard the law.

It is very important that I once again go over with you certain important definitions.

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1
2 Aid and Abet Defined. In order to aid and
3 abet another to commit a crime it is necessary
4 that the accused willfully associate himself in
5 some way with the criminal venture and willfully
6 participate in it as he would in something he
7 wishes to bring about; that is to say, that he
8 willfully seek by some act or omission of his to
9 make the criminal venture succeed.

10 "An act or omission is willfully done if
11 done voluntarily and intentionally and with the
12 specific intent to do something the law forbids or
13 with the specific intent to fail to do something
14 the law requires to be done; that is to say, with
15 bad purpose either to disobey or to disregard the
16 law.

17 "You, of course, may not find any defendant
18 guilty unless you find beyond a reasonable doubt
19 that every element of the offense as defined in
20 these instructions was committed by some person
21 or persons and that the defendant participated in
22 its commission.

23 "Willfully to Cause Criminal Act, Defined.

24 "In order to cause another person to commit
25 a criminal act it is necessary that the accused

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willfully do or willfully fail to do something which in the ordinary performance of official duty or in the ordinary course of the business or employment of such other person or by reason of the ordinary course of nature or the ordinary habits of life results in the other person's either doing something the law forbids or failing to do something the law requires to be done.

"An act or failure to act is willfully done if done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose, either to disobey or to disregard the law.

"Mere Presence Not Enough. Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator," therefore, as I have previously instructed you, to determine whether a defendant aided and abetted the commission of an offense,

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you ask yourselves these questions.

Did he associate himself with the venture?

Did he participate in it as something he wished to bring about?

Did he seek by his actions to make it succeed?

If he did, then he is an aider and an abettor. This is true whether or not he received or intended to receive the proceeds of the venture.

Essential Elements of the Offense.

Count 5 of the indictment charges that on or about October 31, 1975, within the Eastern District of New York, the defendants Cosme A. Caceres, Leopold Lozano, and Jose A. Liriano, with intent to defraud, had in their possession counterfeited United States currency, to wit, approximately six counterfeited \$20 Federal Reserve notes and one counterfeited \$50 Federal Reserve note, knowing such notes to be counterfeited.

The essential elements of the offense charged in Count 5 of the indictment, each of which the government must prove beyond a reasonable doubt are:

First, that the defendants had possession of the counterfeited notes specified in the indictment;

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Second, that the defendants had such possession with knowledge that the notes were counterfeited;

Third, that the defendants had such knowing possession of the counterfeited notes with the specific intent to defraud some person.

As stated before, the burden is also upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged.

Also bear in mind the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Count 6 of the indictment is based on Title 18 of the United States Code, Section 472.

As I have previously stated to you, Title 18 of the United States Code, Section 472, provides in pertinent part as follows:

"Whoever with intent to defraud, keeps in his possession any counterfeited currency of the United States shall be guilty of an offense against the laws of the United States."

Count 6 of the indictment charges that on or about October 31, 1975, within the Eastern District of New York, the defendant Jose A. Liriano,

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1 with intent to defraud had in his possession
2 counterfeited United States currency, to wit, one
3 counterfeited \$50 Federal Reserve note, knowing
4 such note to be counterfeited.
5

6 The essential elements of the offense
7 charged in Count 6 of the indictment, each of which
8 the government must prove beyond a reasonable doubt
9 are:

10 First, that the defendant Jose A. Liriano
11 had possession of the counterfeited note specified
12 in the indictment;

13 Second, the defendant Jose A. Liriano had
14 such possession with knowledge that the note was
15 counterfeited;

16 Third, that the defendant Jose A. Liriano
17 had such knowing possession of the counterfeited
18 note with the specific intent to defraud some
19 person.

20 As stated before, the burden is always upon
21 the prosecution to prove beyond a reasonable doubt
22 every essential element of the crime charged.
23 Always bear in mind that the law never imposes upon
24 a defendant in a criminal case the burden or duty
25 of calling any witnesses or producing any evidence.

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Count 7 of the indictment is based on Title 18 of the United States Code, Section 472, which I will now read to you:

"Whoever with intent to defraud, keeps in his possession any counterfeited currency of the United States shall be guilty of an offense against the laws of the United States."

The Essential Elements of the Offense.

Count 7 of the indictment charges that on or about October 31, 1975, within the Eastern District of New York, the defendant Cosme A. Caceres, with intent to defraud, had in his possession counterfeited United States currency, to wit, one counterfeited \$20 Federal Reserve note, knowing such note to be counterfeited.

The essential elements of the offense charged in Count 7 of the indictment, each of which the government must prove beyond a reasonable doubt are:

First, the defendant Cosme A. Caceres had possession of the counterfeited note specified in the indictment;

Second, the defendant Cosme A. Caceres had such possession with knowledge that the note was counterfeited;

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Third, that the defendant Cosme A. Caceras had such knowing possession of the counterfeited note with the specific intent to defraud some person.

As stated before, the burden is always upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged.

Also bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or providing any evidence.

Statute. Count Eight of the indictment is based on Title 18 of the United States Code, Section 371, which reads in pertinent part as follows:

"If two or more persons conspire to commit any offense against the United States and one or more of such persons do any act to effect the object of the conspiracy, each is guilty of an offense against the laws of the United States."

Conspiracy Defined and Proof of Existence of Conspiracy.

A conspiracy is a combination of two or more persons by concerted action to accomplish some unlawful purpose or to accomplish some lawful purpose by unlawful means.

So a conspiracy is a kind of partnership

35

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in criminal purpose in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to disobey or to disregard the law.

Mere similarity of conduct among various persons and the fact they may have associated with each other and may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy; however, the evidence in the case need not show that the members entered into any express or formal agreement or that they directly by words spoken or in writing stated between themselves what their object or purpose was to be or the details thereof or the means by which the object or purpose was to be accomplished.

What the evidence in the case must show beyond a reasonable doubt in order to establish proof that a conspiracy existed is that the members in some way or manner or through some contrivance expressly or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the

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1 indictment were agreed upon to carry out the
2 alleged conspiracy nor that all means or methods
3 which were agreed upon, were actually used or put
4 into operation nor that all of the persons charged
5 to have been members of the alleged conspiracy were
6 such. What the evidence in the case must establish
7 beyond a reasonable doubt is that the alleged
8 conspiracy was knowingly formed by two or more
9 persons, including the accused, and that some
10 overt act in furtherance of the conspiracy was
11 performed.
12

13 Proof of Membership in Conspiracy. One may
14 become a member of a conspiracy without full
15 knowledge of all the details of the conspiracy.
16 On the other hand, a person who has no knowledge
17 of a conspiracy but happens to act in a way which
18 furthers some object or purpose of the conspiracy
19 does not thereby become a conspirator.

20 Before the jury may find a defendant or any
21 other person has become a member of a conspiracy,
22 the evidence in the case must show beyond a
23 reasonable doubt that the conspiracy was knowingly
24 formed and that the defendant or other person who is
25 claimed to have been a member willfully participated

1
2 in the unlawful plan with the intent to advance or
3 further some object or purpose of the conspiracy.

4 To act or participate willfully means to
5 act or participate voluntarily and intentionally
6 and with specific intent to do something the law
7 forbids or with specific intent to fail to do
8 something the law requires to be done; that is to
9 say to act or participate with a bad purpose
10 either to disobey or to disregard the law. So,
11 if a defendant or any other person, with understand-
12 ing of the unlawful character of a plan, knowingly
13 encourages, advises or assists, for the purpose of
14 furthering the under taking or scheme, he thereby
15 becomes a willful participant--a conspirator.

16 One who willfully joins an existing conspiracy
17 is charged with the same responsibility as if he had
18 been one of the originators or instigators of the
19 conspiracy.

20 In determining whether a conspiracy existed,
21 the jury should consider the actions and declara-
22 tions of all the alleged participants; however,
23 in determining whether a particular defendant was a
24 member of a conspiracy, the jury should consider
25 only his acts and statements. He cannot be bound

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by the acts or declarations of other participants until it is established that a conspiracy existed beyond a reasonable doubt and that he was one of its members.

Essential Elements of Offense. When Conspiracy Offense Complete.

Five essential elements are required to be proved by the government beyond a reasonable doubt in order to establish the offense of conspiracy charged in the indictment.

First, that two or more people were involved, since a conspiracy requires an agreement;

Second, that the purpose of the agreement was to possess and to utter and publish a quantity of counterfeited United States currency, to wit, counterfeited \$20 Federal Reserve notes and counterfeited \$50 Federal Reserve notes;

Third, that the defendants knew that the aforementioned counterfeited notes were in fact counterfeited;

Fourth, that the defendants took part in such conspiracy knowingly and intentionally; and

Fifth, one of the conspirators did some overt act during the course of the conspiracy in order to

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carry out the purpose of the conspiracy.

The burden is always upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged. You cannot infer the existence of one element from proof of another element.

If you are left with a reasonable doubt as to any element of the crime, you must acquit. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

The first three elements do not necessitate a lengthy explanation.

The first element is the determination that two or more persons were involved.

The second element is the determination that the purpose of the agreement was to possess and to utter and publish a quantity of counterfeited notes.

The third element is the requirement that the defendants knew that the Federal Reserve notes were in fact counterfeit.

More need be said as to the last two elements.

The fourth element is that each defendant knowingly and intentionally took part in the conspiracy charged.

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1
2 An act is done knowingly if it is done
3 voluntarily and intentionally and not because of
4 misunderstanding or accident or other innocent
5 reasons. Whether something is done knowingly
6 involves a state of mind, but a state of mind, like
7 other facts, can be determined from the evidence
8 and from inferences from the evidence.

9 The fifth element the government must prove
10 is that one of the conspirators did some overt act
11 during the course of the conspiracy in order to
12 carry out the purpose of the conspiracy. In proving
13 overt acts to establish that the conspiracy was
14 something more than a mere unexecuted agreement,
15 the government is not confined to and need not prove
16 the overt acts stated in the indictment. It is
17 sufficient that the government establish any other
18 overt acts committed during the course of and in
19 furtherance of the conspiracy.

20 A conviction may be based on overt acts not
21 alleged in the conspiracy as long as such overt acts
22 are shown to have been committed during the course
23 of and in furtherance of the very conspiracy alleged
24 in the indictment.

25 Acts and Declarations of Co-conspirators.

1 Whenever it appears beyond a reasonable
2 doubt from the evidence in the case that a conspiracy
3 existed and that a defendant was one of the members,
4 then the statements thereafter knowingly made and
5 the acts thereafter knowingly done by any person
6 likewise found to be a member may be considered by
7 the jury as evidence in the case as to the defend-
8 ant found to have been a member even though the
9 statements and acts may have occurred in the absence
10 of and without the knowledge of the defendant,
11 provided such statements and acts were knowingly
12 made and done during the continuance of such con-
13 spiracy and in furtherance of some object or purpose
14 of the conspiracy; otherwise any admission or in-
15 criminatory statement made or act done outside of
16 court by one person may not be considered as
17 evidence against any person who is not present and
18 did not hear the statement made or see the act
19 done; therefore, statements of any conspirator which
20 are not in furtherance of the conspiracy or made
21 before its existence or after its termination
22 may be considered as evidence only against the
23 person making them.

24 Consideration of evidence. Success of
25

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Conspiracy Immaterial. Definition of Overt Act.

In your consideration of the evidence in the case as to the offense of conspiracy charged, you should first determine whether or not the conspiracy existed as alleged in the indictment. If you conclude the conspiracy did exist, you should next determine whether or not the accused willfully became a member of the conspiracy. If it appears beyond a reasonable doubt from the evidence in the case that the conspiracy alleged in the indictment was willfully formed and that the defendant willfully became a member of the conspiracy, either at its inception or afterwards and that thereafter one or more of the conspirators knowingly committed during the course of the conspiracy one or more overt acts in furtherance of some object or purpose of the conspiracy, then there may be a conviction even though the conspirators may not have succeeded in accomplishing their common object or purpose and in fact may have failed of so doing.

The extent of any defendant's participation, moreover, is not determinative of his guilt or innocence. A defendant may be convicted as a conspirator even though he may have played only a minor part in

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the conspiracy.

An overt act is any act knowingly committed by one of the conspirators in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature if considered separately and apart from the conspiracy. It may be as innocent as the act of a man walking across the street or driving an automobile or using a telephone. It must, however, be an act which follows and tends towards accomplishment of the plan of scheme and must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the indictment.

There must be more than one conspirator.

The eighth count of the indictment charges a conspiracy between all three named defendants. You are charged as a matter of law that a person cannot conspire with himself, and therefore you cannot find any of the defendants guilty of the crime of conspiracy unless you find beyond a reasonable doubt that he participated in the conspiracy as charged with at least one other of the named defendants.

With this qualification you may find all

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three of the named defendants guilty, or all three of the named defendants not guilty, or you may find that two of the defendants are guilty while one of the defendants is not guilty, all in accordance with these instructions and the facts you find.

However, you are reminded that you may not as a matter of law and of logic find only one of the named defendants guilty of conspiracy while finding the other two named defendants not guilty.

Definitions.

Please bear in mind the following definitions in considering the essential elements of the crimes charged:

Definition of Possession.

The law recognizes two kinds of possession: actual possession and constructive possession. A person who knowingly has direct physical control over a thing at a given time is then in actual possession of it. A person who, although not in full possession, knowingly has the power at a given time to exercise dominion or control over a thing, is then in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole.

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1
2 If two or more persons share actual or constructive
3 possession of a thing, their possession is joint.

4 If you find from the evidence beyond a reason-
5 able doubt that the defendants either alone or with
6 others had actual or constructive possession of the
7 counterfeited bills described in the indictment,
8 then you may find that the counterfeited bill or
9 bills were in the possession of the defendant within
10 the meaning of the word possession as used in these
11 constructions.

12 Actual, manual or personal possession is not
13 a necessary element of the crime. It is sufficient
14 if the possession is constructive, if the counter-
15 feited bills are shown to be under the control of
16 the person charged though in actual physical posses-
17 sion of another. The government does not have to
18 prove that the counterfeited bills were possessed
19 by the defendant for any particular length of time.

20 Knowingly. An act is done knowingly if done
21 voluntarily and intentionally and not because of
22 mistake or accident or other innocent reason. The
23 purpose of adding the word "knowingly" was to insure
24 that no one would be convicted for an act done because
25 of mistake or accident or other innocent reason.

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Definition of "Willfully" -- to Act

An act is done willfully if done voluntarily and intentionally and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

To Act with Intent to Defraud.

To act with intent to defraud means to act willfully and with the specific intent to deceive or cheat, ordinarily, for the purpose of either causing some financial loss to another or bringing some financial gain to oneself. However, the evidence in the case need not establish that the United States or any person was actually defrauded, but only that the accused acted with the intent to defraud.

To Utter and to Publish Defined.

The terms to utter and to publish as used in the statute are synonymous, since the meaning of both is to declare or assert, directly or indirectly, by words or actions that the counterfeited note is genuine.

What this means then is to make any use of the counterfeited note with knowledge of its counterfeited nature, such as an attempt to place in

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circulation whereby or in connection with which some assertion, representation or claim is made to another in some way or manner, directly or indirectly, expressly or impliedly or by words or conduct that the counterfeited note is genuine.

Definition of Specific Intent. This is applicable to all offenses charged in the indictment. The crimes charged in this case are serious crimes which require proof of specific intent before a defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act.

To establish specific intent, the government must prove that a defendant knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

Intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind, but you may infer the defendants' intent from the surrounding circumstances. You may consider any statement made and act done or omitted by a defendant and all other facts and circumstances in evidence which indicate

his state of mind.

It is ordinarily reasonable to infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

Reasonable Doubt.

There are in any case, and in this one, two types of evidence from which a jury may properly find the defendant guilty of a crime. One is direct evidence, such as testimony of an eyewitness. The other is circumstantial evidence, which is proof of a chain of facts and circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting a defendant the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

A defendant is presumed innocent of the crime; thus the defendant, although an accused, begins the trial with a clean slate and with no evidence against him, and the law permits nothing but legal evidence to be presented before a jury to be considered in support of any charge against an accused. So that the presumption of innocence alone is sufficient to

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1
2 acquit a defendant unless you, the jury, are satis-
3 fied beyond a reasonable doubt of the defendant's
4 guilt after careful and impartial consideration of
5 all the evidence in the case.

6 It is not required that the government prove
7 guilt beyond all possible doubt. The test is one of
8 reasonable doubt, and reasonable doubt is doubt based
9 upon reason and common sense, the kind of doubt that
10 would make a reasonable person hesitate to act.
11 Proof beyond a reasonable doubt must therefore be
12 proof of such a convincing character that you would
13 be willing to rely and act upon it unhesitatingly
14 in the most important of your own affairs.

15 You the jury will remember that a defendant
16 is never to be convicted on mere suspicion or con-
17 jecture. The burden is always upon the prosecution
18 to prove guilt beyond a reasonable doubt. This
19 burden never shifts to a defendant. The law never
20 imposes upon a defendant in a criminal case the
21 burden or duty of calling any witnesses or producing
22 any evidence; so if the jury views the evidence in
23 the case as reasonably permitting either of two
24 conclusions, one of innocence, the other of guilt,
25 you the jury should adopt the conclusion of innocence.

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I have said the defendant may be proven guilty either by direct or circumstantial evidence. I have said that direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. Also, circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant. You, the jury, may make common sense inferences from the proven facts.

It is not necessary that all the inferences drawn from the facts in evidence be consistent only with guilt and inconsistent with every reasonable hypothesis of innocence. The test is one of reasonable doubt and should be based upon all the evidence, the testimony of the witnesses, the documents offered into evidence, and the reasonable inferences which can be drawn from the proven facts.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from the facts which have been proved. You are to consider only the evidence in the case, but in your consideration of the evidence you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw from the facts which you

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find have been proved such reasonable inferences as seem justified in the light of your own experience.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right to rely upon failure of the prosecution to establish such proof.

Proof of Knowledge and Intent.

Knowledge and intent exist in the mind. Since it is not possible to look into a man's mind to see what went on, the only way you have for arriving at a decision in these questions is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question.

Direct Proof is Unnecessary.

Knowledge and intent may be inferred from all the surrounding circumstances. As far as intent is concerned, you are instructed that a person is presumed to intend the natural and probable or ordinary

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2 consequences of his acts. You must find beyond a
3 reasonable doubt from all the evidence that the
4 defendants knew at the time that they possessed
5 or uttered the counterfeited money that the bills
6 were in fact counterfeit.

7 The question of knowledge and intent are
8 one of the elements of the crime which must be proven
9 beyond a reasonable doubt.

10 While a man may not close his eyes to those
11 facts which to the ordinary person would be
12 obvious, he is not expected to have anything but
13 normal insight into the affairs of his life. If
14 you find from all the evidence that there was no
15 reason why these defendants could have known or
16 should have known that the money was counterfeit,
17 then you should properly find them not guilty.

18 Here suspicion that something was wrong
19 or improper is not equivalent to knowledge and intent.

20 Credibility of witnesses. You as jurors are
21 the sole judges of the credibility of the witnesses
22 and the weight their testimony deserves, and it
23 goes without saying that you should scrutinize all
24 the testimony given, the circumstances under which
25 each witness has testified and every matter in

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evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive and state of mind and his demeanor and manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified, whether he or she impressed you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently, and innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether

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2 the discrepancy results from innocent error or
3 intentional falsehood.

4 After making your own judgment, you will give
5 the testimony of each witness such credibility, if
6 any, as you may think it deserves.

7 Another test that you can use in determining
8 the truthfulness or credibility of a witness is to
9 use your own good common sense in addition to these
10 essentials that I have given you. You can use your
11 good common sense as you do in your everyday
12 experience where you must make important decisions
13 based upon what others tell you. When you decide
14 either to accept or ignore the statements of others,
15 you use your common sense. Your good judgment will
16 say to you somehow or other that whatever they say
17 does not appear to be truthful, that somehow or
18 other you just do not believe what they have said.
19 That is your ability to reason, your ability to
20 determine the truthfulness of the person you are
21 speaking with.

22 Likewise, your common sense should be used
23 to determine the weight to be given to testimony of
24 a witness. You take that same good common sense
25 into the jury room. You do not leave it outside.

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2 In addition to what I have said, use your
3 common sense as a test in exercising your good judg-
4 ment and in determining whether or not each defendant
5 is guilty of each of the crimes charged. It is for
6 you to determine whether the witnesses in this case
7 have testified truthfully, whether or not they have
8 an interest in the case, what that interest may
9 be and how great it is, and whether or not they have
10 told you falsehoods. This is all for you to determine.

11 Every witness's testimony must be weighed
12 as to its truthfulness. If you find any witness
13 lied as to any material fact in the case, then the
14 law gives you certain privileges. One of those
15 privileges is that you have the right to disregard
16 the entire testimony of that witness. If you find,
17 however, that you can sift through that testimony
18 and determine which of the testimony is true and
19 which was false, then the law allows you to take the
20 portions which are true and weigh it and disregard
21 those portions which were false. That, again, is
22 within your prerogative.

23 The weight of the evidence is not necessarily
24 determined by the number of witnesses testifying on
25 either side. You should consider all the facts and

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2 circumstances in evidence to determine which of
3 the witnesses are worthy of greater credence.
4 You may find that the testimony of a smaller number
5 of witnesses on one side is more credible than the
6 testimony of a greater number of witnesses on the
7 other side. You are not obliged to accept testimony
8 even though the testimony is uncontradicted and
9 the witness is not impeached. You may decide
10 because of the witness's bearing and demeanor or
11 because of the inherent improbability of his or
12 her testimony or for other reasons sufficient to
13 you that such testimony is not worthy of belief.

14 The government is not required to prove
15 the essential elements of the offense as defined
16 in these instructions by any particular number of
17 witnesses. The testimony of a single witness may
18 be sufficient to convince you beyond a reasonable
19 doubt of the existence of an essential element
20 of the offense charged if you believe beyond a
21 reasonable doubt that the witness was telling
22 the truth.

23 All available evidence need not be produced.
24 The law does not require the prosecution to call
25 as witnesses all persons who may have been present

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2 at any time or place involved in the case or who
3 may appear to have some knowledge of the matters
4 in issue at this trial; nor does the law require
5 the prosecution to produce as exhibits all papers and
6 things mentioned in the evidence. However, in judg-
7 ing the credibility of the witnesses who have testi-
8 fied and considering the weight and effect of all
9 evidence that has been produced, the jury may con-
10 sider the prosecution's failure to call other
11 witnesses or to produce other evidence shown by
12 the evidence in the case to be in existence and
13 available.

14 The jury will always bear in mind that the
15 law never imposes upon a defendant in a criminal
16 case the burden or duty of calling any witnesses
17 or producing any evidence, and no adverse inference
18 may be drawn from his failure to do so.

Defendant Takes the Stand.

19
20 When a defendant in a case of this kind takes
21 the stand, which he has a perfect right to do, he
22 is subject to all the obligations of witnesses,
23 and his testimony is to be treated like the testimony
24 of any other witness, that is to say, it will be
25 for you to say, remembering the substance of his

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1 testimony, the manner in which he gave it, his cross-
2 examination, and everything else in the case, whether
3 or not he told the truth. Then, again, it is for
4 you to remember, and you have a perfect right to
5 do so, the interest the defendant has in the case.
6 As he places himself as a witness, he stands like
7 any other witness.
8

9 Effect of Prior Inconsistent Statements or
10 Conduct--By a Witness not a Party--By the Accused.

11 Evidence that at some other time a witness
12 other than the accused has said or done something
13 or has failed to say or do something which is
14 inconsistent with the witness's testimony at the
15 trial may be considered by the jury for the sole
16 purpose of judging the credibility of the witness,
17 but may never be considered as evidence or proof
18 of the truth of any such statement.

19 Where, however, the witness is a defendant
20 on trial in the case and by such statement or other
21 conduct the defendant admits some fact against
22 his interest, then such statement or other conduct,
23 if knowingly made or done, may be considered as
24 evidence of the truth of the fact so admitted as
25 well as for the purpose of judging the credibility

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of the defendant as a witness.

An act or omission is knowingly done if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

Opinion Evidence--Expert Witness.

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call expert witnesses. Witnesses who by education and experience have become expert in some art, science, profession or calling may state an opinion as to relevant and material matter in which they profess to be an expert and may also state their reasons for the opinion. You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves.

If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

Impeachment--Inconsistent Statements or Conduct.

The testimony of a witness may be discredited

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2 or impeached by showing that he previously made
3 statements which are inconsistent with his present
4 testimony. The earlier contradictory statements
5 are admissible only to impeach the credibility of
6 the witness and not to establish the truth of these
7 statements. It is the province of the jury to
8 determine the credibility, if any, to be given the
9 testimony of a witness who has been impeached.

10 If a witness is shown knowingly to have
11 testified falsely concerning any material matter,
12 you have a right to distrust such witness's testimony
13 in other particulars and you may reject all the
14 testimony of that witness or give it such credibility
15 as you may think it deserves.

16 An act or omission knowingly done, if done
17 voluntarily and intentionally and not because of
18 mistake or accident or other innocent reason.

Exculpatory Statements Later Shown False.

19 Conduct of a defendant, including statements
20 knowingly made and acts knowingly done upon being
21 informed that a crime has been committed or upon
22 being confronted with a criminal charge, may be
23 considered by the jury in light of all other
24 evidence in the case in determining guilt or innocence.
25

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When a defendant voluntarily and intentionally offers an explanation or makes some statement intending to show his innocence and this explanation or statement is later shown to be false, the jury may consider whether this circumstantial evidence points to a consciousness of guilt. Ordinarily it is reasonable to infer that an innocent person does not usually find it necessary to invent or fabricate an explanation or statement attempting to establish his innocence.

Whether or not evidence as to a defendant's voluntary explanation or statement points to a consciousness of guilt and the significance to be attached to any such evidence are matters exclusively within the province of the jury.

A statement or act is knowingly made or done if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Testimony of Federal Officials.

The probable truthfulness and believability of

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1 every witness is for you and for each of you to
2 decide. That I have already instructed you. The
3 fact that such witnesses come before you as govern-
4 ment agents should not in the least change your
5 attitude in this respect. Their testimony does not
6 deserve either greater or lesser believability
7 simply because of their official status.
8

9 Whether you do or do not believe any
10 witness must depend upon how truthful you judge that
11 witness to be after you have heard the testimony
12 and formed your own conclusions as to the witness's
13 believability.

Extra-Judicial Statements or Conduct.

14 Evidence relating to any statement or act or
15 omission claimed to have been made or done by a
16 defendant outside of court and after a crime has
17 been committed should always be considered with
18 caution and weighed with great care, and all such
19 evidence should be disregarded entirely unless
20 the evidence in the case convinces the jury beyond
21 a reasonable doubt that the statement or act or
22 omission was knowingly made or done.
23

24 A statement or act or omission is knowingly
25 made or done if done voluntarily and intentionally

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and not because of mistake or accident or other innocent reason.

In determining whether any statement or act or omission claimed to have been made by a defendant outside of court and after a crime has been committed was knowingly made or done, the jury should consider the age, training, education, occupation and physical and mental condition of the defendant and his treatment while in custody or under interrogation as shown by the evidence in the case, and also all other circumstances in evidence surrounding the making of the statement or act or omission, including whether before the statement or act or omission was made or done, the defendant knew or had been told and understood that he was not obligated or required to make or do the statement or act or omission claimed to have been made or done by him; that any statement or act or omission which he might make or do could be used against him in court; that he was entitled to the assistance of counsel before making any statement, either oral or in writing or before doing any act or omission; and that if he was without money or means to retain counsel of his own choice, an attorney would be appointed to advise

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and represent him free of cost or obligation.

If the evidence in the case does not convince beyond a reasonable doubt that the statement was made voluntarily and intentionally, you should disregard it entirely.

On the other hand, if the evidence in the case does show beyond a reasonable doubt that a statement was in fact voluntarily and intentionally made by a defendant, you may consider it as evidence in the case against the defendant who voluntarily and intentionally made the confession.

Statements, When Involuntary.

If it appears from the evidence in the case that a statement would not have been made but for some threat of harm or some offer or promise of immunity from prosecution, or leniency in punishment or other reward, such a statement should not be considered as having been voluntarily made because of the danger that a person accused might be persuaded by the pressure of hope or fear to confess as facts things which are not true in an effort to avoid threatened harm or punishment or to secure a promised reward.

If the evidence in the case leaves the jury

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with a reasonable doubt as to whether a statement was voluntarily made, then the jurors should disregard it entirely.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A. Post-Arrest Statement Incriminating Co-Defendant. A post-arrest statement made or act done by one defendant outside of court may not be considered as evidence against another defendant who was not present and so did not see the act done or hear the statement made.

Judging the Evidence.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense, consider the evidence in the case for only those purposes for which it has been admitted, and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

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2 If an accused be proved guilty beyond a
3 reasonable doubt, say so; if not so proved guilty,
4 say so.

5 Keep constantly in mind that it would be a
6 violation of your sworn duty to base a verdict of
7 guilty upon anything other than the evidence in the
8 case, and remember as well that the law never imposes
9 upon a defendant in a criminal case the burden or
10 duty of calling any witnesses or producing any
11 evidence.

12 Jury's recollection controls.

13 If any reference by the Court or by counsel
14 to matters of evidence does not coincide with your
15 own recollection, it is your recollection which
16 should control during your deliberations.

17 Punishment.

18 Under your oath as jurors you cannot allow
19 a consideration of the punishment which may be imposed
20 upon the defendant if convicted to influence your
21 verdict in any way or in any sense enter into your
22 deliberations.

23 The duty of imposing sentence rests exclusively
24 upon the Court. Your function is to weigh the evidence
25 in the case and to determine the guilt or innocence

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of the defendant solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence and the evidence alone, and you must not be influenced by any assumption, conjecture or sympathy or any inference not warranted by the facts until proven to your satisfaction.

Exclude Sympathy and Antipathy.

In reaching your verdict you are not to be affected by sympathy or antipathy for any of the parties, what the reaction of the parties or of the public to your verdict may be, whether it will please or displease anyone, be popular or unpopular or, indeed, any consideration outside the case as it has been presented to you in this courtroom.

You should consider only the evidence, both the testimony and the exhibits, find the facts from what you consider to be the believable evidence, and apply the law as I now give it to you to those facts.

Your verdict will be determined by the conclusion thus reached, no matter whom the verdict helps or hurts.

Verdict--Multiple Counts, Multiple Defendants.

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A separate crime or offense is charged against each defendant in each count of the indictment. Each offense and the evidence pertaining to it should be considered separately.

The fact that you may find one of the accused guilty or not guilty of one of the offenses charged should not control your verdict as to other offenses charged against the other defendants.

Consider each Defendant.

It is your duty to give separate personal consideration to the case of each individual defendant. When you do so, you should analyze what the evidence in the case shows with respect to that defendant, leaving out of consideration entirely any evidence admitted solely against some other defendant or defendants.

Each defendant is entitled to have his case determined from evidence as to his own acts and statements and conduct and any other evidence in the case which may be applicable to him.

Unanimous Verdict.

In this type of case there must be a unanimous verdict. That means all twelve of you must agree, and it goes without saying that it becomes incumbent

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2 upon you to listen to one another and to argue out
3 the points among yourselves in order to determine
4 in good conscience whether your fellow juror's
5 argument is one commensurate with yours or whether
6 at least you can with good conscience agree with him
7 or her.

8 You have no right to stubbornly and idly sit
9 by and say, "I'm not talking to anyone. I'm not
10 going to discuss it," because people with common
11 sense and the ability to reason must communicate.
12 They must communicate their thoughts. So anything
13 which appears in the record and about which one of you
14 may not agree, talk it out amongst yourselves and
15 then if you can't agree as to what is in the record,
16 well, you can ask the Court to have that portion of
17 the testimony read back to you. You may do so by
18 knocking on the door and giving a note in writing to
19 the United States Marshal, who will then present it
20 to the Court, and I will then bring you into the
21 courtroom.

22 The forelady will preside over your delibera-
23 tions, and will be your spokesman here in court.

24 As to the form of verdict, as to Count 1,
25 it's not guilty or guilty as to each defendant.

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The three defendants are named in that count.

As to Count 2, it's not guilty or guilty as to each of the defendants named. There are three defendants named.

Count 3, three defendants. As to each defendant, not guilty or guilty.

Count 4, three defendants are named. As to each defendant, not guilty or guilty.

As to Count 5, the three defendants are named. As to each defendant, not guilty or guilty.

Count 6, it's Jose A. Liriano, not guilty or guilty.

Count 7, Cosme A. Caceres, not guilty or guilty.

Count 8, the three defendants are named, that's the conspiracy count. It's not guilty or guilty as to each of the defendants.

At this time the alternates are excused with the thanks of the Court. They are discharged from this case. They may leave. Go downstairs to the jury room. You may leave now, and remove your things from the jury room.

I might also say, in connection with your deliberations, you'll have a copy of the indictment

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2 to use. I'll also send in all of the evidence
3 except the money which is actually real. You will
4 have all of the counterfeited evidence to use in
5 there during your deliberations. The money which
6 is good money will not be sent in unless the jury
7 requests it. If the jury requests it, the money
8 will be sent in to the jury.

9 I will speak to the lawyers at side bar.

10 (Side bar)

11 THE COURT: Exceptions?

12 MS. SELTZER: It seems to me in the last
13 count you said they could find any one of them
14 guilty or not guilty. You have to find two guilty.

15 THE COURT: Yes, that's true, but I think
16 it's consistent. You could find any one not guilty.

17 MS. SELTZER: You could find two guilty.

18 THE COURT: I have instructed.

19 Any exceptions?

20 MR. GOULD: I have no exceptions, but to ask
21 them -- have it read back, at one point, the out-
22 of-court statement of one defendant cannot be used
23 against another. It was not qualified by saying
24 the post-arrest out-of-court statement because the
25 conspiracy, of course, are all out-of-court statements

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and intended to be used against one another.

THE COURT: Provided they find they were members of the conspiracy. I think that was clarified in the charge.

MR. COULD: The other thing, your Honor, again just a general statement for the record, is that this charge about if there is innocence and guilt and there is two things you can draw -- you draw the innocent one. That's a general rule, I think that gives the impression the Government has the burden of proof, of proving beyond a reasonable doubt as to each fact in the case. It was not specifically linked in your charge to the elements of the crime.

I have no objection to it, just a general statement.

THE COURT: You just take exception.

MR. COULD: Yes.

THE COURT: Any other exceptions?

MR. KRAMER: No.

(In open court)

THE COURT: The Clerk may swear in the Marshals.

(Two Marshals are sworn.)

THE COURT: The jury may retire for deliberations.

(The jury leaves the courtroom.)

